IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 176 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

KALPANABEN ISHWARLAL

Appearance:

1. INCOME TAX REFERENCE No. 176 of 1989
MR TANVISH BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in

respect of the assessment year 1983-84 :-

"Whether the Tribunal is right in law in setting aside the order made by the CIT u/s. 263 of the I.T. Act, 1962 ?"

2. We have heard Mr Tanvish Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The assessee is an individual. For the assessment year 1983-84, the assessee filed her return of income on 29.9.1983 at Rs.20,010/-. The Income-tax Officer accepted the return and made the assessment under Section 143(1) of the Act. However, on perusal of the record of the assessment in the case of the assessee for the year under consideration, the Commissioner of Income-tax noticed that the assessee had filed her return of net wealth for the first time for the assessment year 1983-84 on 29.9.1983 showing gold ornaments weighing 328 grams valued at Rs.30,000/-. The assessee had claimed that the said gold ornaments were received by her at the time of her marriage. The Commissioner of Income-tax noticed that there had been a search under Section 132 of the Act at the residential premises of Bharatkumar Ishwarlal, brother of the assessee on 19.3.1983. It was after the said search that the assessee had filed her return of wealth on 29.9.1983 showing the said ornaments as belonging to her. The Commissioner found that the Income-tax officer had not conducted any enquiry into the source of acquisition of gold ornaments by the assessee as shown by her wealth-tax returns and, therefore, the assessment order as passed by the Income-tax officer under Section 143(1) without conducting necessary enquiry was erroneous in as much as the same was prejudicial to the interest of the revenue. The Commissioner of Income-tax has, therefore, invoked his jurisdiction under Section 263 of the Act and after hearing the assessee and feeling not satisfied with the explanation offered by the assessee, set aside the assessment made by the Income-tax Officer and directed him to reframe the same according to law.

4. In second appeal, the Tribunal held that the Commissioner could not have taken action under Section 263 of the Act in the case of the assessee on the basis of the records in the cases of other persons, no matter how closely they were related to the assessee. Holding thus, the Tribunal set aside the order of the Commissioner. Hence, this reference at the instance of the revenue.

5. At the hearing of this reference today, Mr Tanvish Bhatt, learned standing counsel for the revenue has invited our attention to the decision of the Supreme Court in Commissioner of Income-tax vs. Shree Manjunathesware Packing Products and Camphor Works, (1998) 231 ITR 53 wherein the Apex Court has examined the legislative amendment to Section 263 including the amendment made with retrospective effect for amplifying the scope of the term "record". In the said decision, the Supreme Court did not accept the narrow interpretation of the word "record" which had appealed to the Calcutta High Court in the case of Ganga Properties vs. ITO, (1979) 118 ITR 447 and the Apex Court held as under :-

> "The revisional power conferred on the Commissioner under section 263 is of wide amplitude. It enables the Commissioner to call for and examine the record of any proceeding under the Act. It empowers the Commissioner to make or cause to be made such enquiry as he deems necessary in order to find out if any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. After examining the record and after making or causing to be made an enquiry if he considers the order to be erroneous then he can pass the order thereon as the circumstances of the case justify. Obviously, as a result of the enquiry he may come into possession of new material and he would be entitled to take that new material into account. If the material, which was not available to the Income-tax Officer when he made the assessment could thus be taken into consideration by the Commissioner after holding an enquiry, there is no reason why the material which had already come on record though subsequently to the making of the assessment cannot be taken into consideration by him. Moreover, in view of the clear words used in clause (b) of the Explanation to section 263(1), it has to be held that while calling for and examining the record of any proceeding under section 263(1) it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination."

6. Following the aforesaid decision, we are of the view that thee is nothing in the provisions of the Income-tax Act, 1961 particularly section 263 of the Act or in the aforesaid pronouncement of the Apex Court which would require us to accept the narrow view which appealed to the Tribunal that the record must be of the assessee concerned and that the Commissioner had no power, jurisdiction and authority to take action under Section 263 of the Act in case of the assessee on the basis of the records in the cases of other persons.

Our answer to the question is accordingly in the negative i.e. in favour of the revenue and against the assessee.

7. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-